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11 Counsel for Defendant PIPPERT

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14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
16  
17 SAN FRANCISCO DIVISION

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UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
DOUGLAS PIPPERT,  
Defendant.

**Case No.: CR 17-0563 VC**

**REPLY ON GOVERNMENT'S  
SENTENCING MEMORANDUM**

**Court:** Hon. Vince Chhabria  
**Date:** October 2, 2018  
**Time:** 10:30 a.m.

1 **ARGUMENT**

2 The government's primary reasoning in support of its argument that the Court should  
 3 impose a sentence of 235 months upon Defendant Douglas Pippert is that the Static 99-R test –  
 4 the leading psychometric test designed to measure risk of sexual recidivism, which was  
 5 administered to Mr. Pippert by California state authorities in connection with this case in 2016  
 6 and resulted in a 3, placing him in the low-moderate risk category, PSR ¶ 57 – “is problematic  
 7 for predicting recidivism.” Gov’t Sent. Memo. (Docket #22) (filed Sept. 25, 2018) at 3 (citing  
 8 *United States v. McIlrath*, 512 F.3d 421 (7<sup>th</sup> Cir. 2008)). While of course no tool is perfect,  
 9 both the *McIlrath* decision and myriad other decisions have recognized that the Static 99 test is  
 10 the best available instrument for predicting the risk of recidivism in cases such as this and  
 11 routinely rely upon it, particularly when as here it is combined with the clinical judgment of an  
 12 expert.

13 Along these lines, the *McIlrath* court recognized that “[t]he methodology employed by  
 14 Static 99 to predict the probability of recidivism has been accepted in a number of cases.” 512  
 15 F.3d at 425 (string cite omitted). While acknowledging that there are “problems with efforts to  
 16 predict recidivism from offenders’ characteristics,” *McIlrath* expressly concluded the Static 99  
 17 is the proper starting place for the analysis, although it should also take other factors into  
 18 account. *See id.* (“Static 99 may be a good place to start an analysis of the likelihood of a  
 19 specific defendant’s repeating his crime – but not to end it.”). Rather, it is the combination of  
 20 the Static 99 test, plus the opinion of an expert, that it provides the most reliable prediction.  
 21 *See id.* at 425-26. That is exactly what occurred in this case, where Dr. Scott Lines opined that  
 22 Mr. Pippert’s actual risk of recidivism is in fact even lower than the low-moderate prediction of  
 23 the Static 99 due to his expected age at the time of release as well as his emerging  
 24 understanding of the connection between his criminal conduct and the abuse he suffered as a  
 25 child. *See* Def. Sent. Memo. at 4-5.

26 As for the Static 99 test itself, the California courts have long recognized it as the “gold  
 27 standard” and “best” among available tools for predicting recidivism in sex offense cases.  
 28 *People v. Seja*, 2011 WL 2937915 (Cal. Ct. App. July 22, 2011) (unpublished decision) at \*5;

1 *see also People v. Wilson*, 2009 WL 4548733 (Cal. Ct. App. Dec. 7, 2009) (unpublished  
 2 decision) at \*5 (“Dr. Vogenson evaluated Wilson using the same actuarial instruments used by  
 3 the People’s experts. He agreed with Dr. Goldberg on Wilson’s scores and on the Static 99 and  
 4 SORAG, and ‘roughly agreed’ with the MNSOST-R score. He described the Static 99 as ‘the  
 5 gold standard tool in cases like this.’”); *People v. Mase*, 2008 WL 4055407 (Cal. Ct. App. Sept.  
 6 2, 2008) (unpublished decision) at \*5 (“Psychologist Dr. Jeremy Coles also testified as an  
 7 expert on behalf of the People. He used two actuarial instruments on Mase, including the Static  
 8 99. He stated that no actuarial instrument was perfect, but they were the best tool for  
 9 predicting re-offense. Dr. Coles also indicated that he considered other factors in making his  
 10 assessment.”); *People v. Calhoun*, 2006 WL 1351492 (Cal. Ct. App. May 18, 2006)  
 11 (unpublished decision at \*9 (“Defense expert Longwell testified about the Static 99 test: ‘[I]t’s  
 12 the best that we have, and scientifically, it is quite good.’ The People’s experts agreed with  
 13 Longwell. Dr. Vognsen testified that the Static 99 test ‘is the most commonly used in my  
 14 profession across the states and across the European world and Canada’ and that ‘[i]t’s the best  
 15 we have.’ Dr. Starr testified that she ‘utilized the Static 99’ and that ‘[p]resently that actuarial  
 16 instrument has the best accuracy of any of the actuarial measures that are available.’”)).<sup>1</sup>

17 Federal courts as well, including numerous decisions from this district, have cited with  
 18 approval the use of the Static 99 test. *See, e.g., Woodard v. Mayberg*, 242 F. Supp.2d 695, 698  
 19 (N.D. Cal. 2003) (“In evaluating appellant, Dr. French employed a rating scheme related to  
 20 recidivism called the ‘Static 99.’”); *see also Nothnagel v. Allenby*, 2016 WL 393164 (N.D. Cal.  
 21 Feb. 2, 2016) (unpublished decision) at \*1 (“Coles and Updegrafe evaluated his risk of  
 22 reoffending using actuarial risk formulas, one of which was the Static 99.”); *Doe v. Harris*,  
 23 2013 WL 144048 (N.D. Cal. Jan. 11, 2013) (unpublished decision) at \*9 (“The government  
 24 already classifies registrants using a risk-assessment tool known as the Static 99.”); *Kirk v.*  
 25 *Hunter*, 2008 WL 5000488 (N.D. Cal. Nov. 21, 2008) (unpublished decision) at \*2 (“Dr. Starr  
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 28 <sup>1</sup> Unpublished California appellate decisions may be cited here and before the Ninth Circuit as  
 persuasive authority, though not as precedent. *See Beeman Pharm. Serv., Inc. v. Anthem  
 Prescription Mgmt.*, 652 F.3d 1085, 1093 (9th Cir. 2011).

1 determined that Petitioner was likely to reoffend based on his score on the Static 99 scale and  
2 his lack of remorse.”).

3 Thus, the Court should reject the government’s argument that the Static 99 results in  
4 this case should be disregarded, particularly where they are as here combined with Dr. Lines’  
5 clinical assessment of Mr. Pippert, which is consistent with those results in predicting a low  
6 risk of recidivism.

7 **CONCLUSION**

8 For the aforementioned reasons, and those set forth in the Mr. Pippert’s Sentencing  
9 Memorandum (Docket #23) (filed Sept. 25, 2018), the Court should sentence Mr. Pippert to a  
10 term of 180 months imprisonment, 10 years supervised release with proposed conditions as  
11 amended, and a special assessment of \$100.

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Respectfully submitted,

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Dated: October 1, 2017

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Northern District of California

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